

STAMP DUTY ON LEASES
2000-01 Budget Amendments
Taxation (Administration) Act / Stamp Duty Act

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TERRITORY REVENUE MANAGEMENT

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Purpose of this Circular

1. The purpose of this circular is to advise of proposed amendments to the *Taxation (Administration) Act* and *Stamp Duty Act* in relation to stamp duty imposed on commercial leases. The proposed amendments include measures announced as part of the 2000-01 Budget and consequential amendments arising from the Commonwealth's national tax reform measures. All of the changes outlined in this circular are to commence from 1 July 2000.

Proposed Changes

2. In summary, the measures:
 - a) provide for an estimated assessment of unascertainable rents for the purposes of paying stamp duty;
 - b) provide a CPI based estimate of rent for leases with rent review clauses;
 - c) extend the residential lease exemption to incorporated lessees; and
 - d) clarify that stamp duty is calculated on the GST-inclusive value of rents.

Estimated Assessments of Unascertainable Rents

3. Stamp duty is currently imposed on commercial lease documents on the basis of the amount of rent paid under the lease. In some cases, rent components are unascertainable at the time of assessment, such as turnover-based or market-based rents.
4. Where a lease is presented for stamping, stamp duty is currently assessed on the ascertainable rent at the time of execution. As such, it has been necessary for the leases with unascertainable rent components to be resubmitted for assessment when these components have crystallised.
5. Moreover, commercial leases generally include provision to review or increase rents at certain times during the term of the lease. Currently, where rent is increased as a result of a rent review, the lease document must be resubmitted for assessment of duty.
6. The amendments will allow commercial leases to be assessed for duty on an estimate of the unascertainable rent at the time of initial lodgement of the lease. In estimating such rents, the Commissioner may take into account rents paid under prior leases or forecasts of future rents payable. Estimates can be made over the full term of the lease or over a period within the lease term. A more detailed information guide will be issued shortly in this regard.

7. Where a lease is assessed for the full term, lessees will be able to lodge their lease for reassessment if the estimated stamp duty is greater than the stamp duty that would have been paid after the unascertainable rents have crystallised. After the unascertainable rent has been estimated over its full term, no further assessment can be made for underpaid stamp duty.
8. Where a lease is assessed on a periodic basis, the lease must be resubmitted at the end of each period, so that the original estimate can be reassessed against the actual rent. Where there is an adjustment, the subsequent estimate will be adjusted accordingly. If it is the last period, any overpaid stamp duty will be refunded and any underpaid stamp duty will be assessed accordingly.
9. These provisions will only apply to leases executed on or after 1 July 2000.

Rent Reviews

10. Where a lease provides for rent to be increased over the term of the lease, the rent will be assessed for stamp duty on an amount uplifted by a CPI based rate.
11. Lessees will be able to lodge their lease for reassessment if the estimated stamp duty is greater than the stamp duty that would have been paid after the unascertainable rents have crystallised.
12. These provisions will only apply to leases executed on or after 1 July 2000.

Corporate Lessees

13. The existing legislation provides an exemption for residential leases where the lessee is a natural person. This exemption has been extended to lessees that are incorporated bodies.
14. The exemption applies to leases executed on or after 1 July 2000.

GST and Commercial Rents

15. The amendments provide for duty to be assessed on the GST-inclusive value of rent amounts. This will include the imputed GST on unascertainable rents that are estimate assessed.

The above is a general summary of the amendments. Reference should be made to the *Taxation (Administration) Amendment Bill 2000* for precise details. If further assistance is required, please contact the office on telephone (08) 8999 5393 or facsimile (08) 8999 5577.

COMMISSIONER OF TAXES